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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 37

ORDER OF RAILWAY CONDUCTORS OF AMERICA, H. W. FRASER, PRESIDENT THEREOF, *et al.*,

Petitioners.

v.

SHELTON PITNEY AND WALTER P. GARDNER, TRUSTEES OF CENTRAL RAILROAD CO. OF NEW JERSEY, *et al.*,

Respondents.

BRIEF FOR PETITIONERS.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

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INDEX

CITATIONS.

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OPINIONS BELOW.

The opinion of the District Court appears at R. 50-52. The District Court's decree appears at R. 52-54. The opinion of the Circuit Court is reported in 145 F. (2d) 351 and appears at R. 56-60.

JURISDICTION.

The judgment of the Circuit Court was entered September 25, 1944. The petition for certiorari was filed on Feb-

ruary 16, 1945, and was granted on June 18, 1945. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended.

STATUTES INVOLVED.

The Railway Labor Act, as amended (45 U. S. C., Section 151, *et seq.*) and Section 77 of the Bankruptcy Act (11 U. S. C., Section 205), the pertinent provisions of which are set forth in the Appendix, *infra*.

STATEMENT.

The Central Railroad Company of New Jersey (hereinafter referred to as the "carrier") is in the process of reorganization under Section 77 of the Bankruptcy Act, as amended, 11 U. S. C., Section 205. The reorganization proceeding is pending in the United States District Court for New Jersey, and the carrier is in the possession and under the operation and control of Shelton Pitney and Walter P. Gardner, trustees of that Court and defendants in this case.[1] (R. 1.)

On March 6, 1943, the Order of Railway Conductors of America (hereinafter called the ORC), a railway labor union, petitioners herein, filed a petition with the District Court which alleged that for many years it had been the duly accredited bargaining representative, under the Railway Labor Act, as amended, of the road conductors of the carrier; and that for approximately 35 years road conductors had manned five daily freight trains, known as the Standard Oil and Bayway drills, under rules, rates of pay, and working conditions which it had negotiated with the carrier (R. 1, 2), as evidenced by petitioners' bargaining

[1] The records of the United States District Court of New Jersey show that the Central Railroad Company of New Jersey has been in reorganization since November 28, 1939, and at all times under the operation and control of Shelton Pitney and Walter P. Gardner as trustees of the court.

agreement with the carrier dated Aug. 1, 1927. (See Ex. T-1.)[2]

The petition alleged that on March 7, 1940, the ORC and carrier by written agreement provided that the method of assigning conductors to service theretofore on these five drills would not be changed except by agreement of the parties. (R. 2, 5-6.) It further alleged that the said agreement effected no change in working conditions for the operation of such drills "but merely continued working conditions that had been in existence for more than thirty-five years . . ." (R. 2.)

On March 7, 1943, the petition alleged that the trustees of the carrier posted a notice indicating an intention to displace the road conductors on the five drills referred to with yard conductors. (R. 3-5, 8-11.) And, finally, the petition charged that the trustees had given no thirty-day notice of their intention to change the agreement of the carrier, as required by Section 6 of the Railway Labor Act which provides as follows:

> "Section 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has

[2] The original exhibits in the case are on file with the clerk of this Court. They are divided into petitioners' exhibits (each of whch is hereinafter referred to as Ex. P-), trustees' exhibits (each of which is hereinafter referred to as Ex. T-) and respondent's exhibits (each of which is hereinafter referred to as Ex. R-).

> been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Then Section 2, Seventh, provides:

> "Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act."

Subdivision (n) of Section 77 of the Bankruptcy Act (11 U. S. C., Sec. 205 (n)) specifically provides that trustees of railroads in bankruptcy shall comply with the provisions of the Railway Labor Act when changing working conditions by the following:

> " . . . No judge or trustee acting under this Title shall change the wages or working conditions of railroad employees except in the manner prescribed in Sections 151 to 163 of Title 45, as amended . . ."

The petition prayed for a summary order to restrain the trustees from violating the contract of March 7, 1940, and for a final order permanently enjoining the trustees from violating such contract "so long as the same shall not be altered or amended in accordance with the provisions of the Railroad Labor Act or other applicable provisions of the law . . ." (R. 5.)

The trustees, in answering the petition, acknowledged the making of the contract of March 7, 1940, but contended that it was not binding upon the Brotherhood of Railroad Trainmen (hereinafter called the BRT), who represented the yard conductors, because the BRT was not a party to such contract. The trustees, however, did not deny that they were bound by the contract. The trustees also alleged that they had executed a later agreement on behalf of the carrier with the BRT, to which the ORC was not a party,

under which the five Standard Oil and Bayway drills would be manned by yard conductors—which agreement was to be effective March 16, 1943. (R. 13, 15, 16, 17, 21-24.) They stated that they had advised H. W. Fraser, President of ORC, that if in his opinion the displacement was in violation of the ORC agreement, it could be handled in accordance with the adjustment procedure set forth in Section 3(i) of the Railway Labor Act. The Trustees also questioned the jurisdiction of the Court to grant the relief requested and suggested that the petition should be dismissed without prejudice to the petitioners to file claims with the National Railway Adjustment Board. (R. 17, 18-19.)

It should be stated parenthetically that before the ORC filed its petition in the District Court, it sought to invoke the services of the National Mediation Board in an effort to forestall a change in its agreement in violation of the provisions of Section 6 of the Railway Labor Act. In response to its request, the Board, in a letter to ORC dated January 21, 1943, quoted a letter from the carrier as stating:

> *"It is the position of the Carrier that it has filed no notice of its desire to change existing agreements nor does it propose to do so, and that this matter is a claim which under* . . . the Railway Labor Act is referable to the National Railroad Adjustment Board, if and when the Carrier proceeds with and carries out its intention of taking off road conductors on these five crews operating wholly within switching limits and substituting yard conductors as required by the Trainmen's Agreement. In other words, when that is done the Conductors, if they feel that any rule or agreement with them has been violated, can proceed exactly as the General Chairman stated in the next to the last paragraph of his letter of November 25th to file a claim with the Adjustment Board for pay for every day the road conductors are denied the right to work on these five crews and yardmen are permitted to man them. It becomes then, a question for the Adjustment Board to interpret and apply whatever agreements can be produced to determine whether the Carrier has

violated the agreements or not and make the proper award."

The Board concluded its letter by referring to the quotation from the carrier's letter, as follows:

> "From the above it does not appear that the carrier has yet proceeded to carry out its intention and that when it does, your remedy is to make claim under your existing agreement."

(See Ex. P-12 and Appendix, *infra*, pp. 50-51)

The BRT intervened and filed an answer in which it alleged, among other matters, that it had entered into an agreement with the trustees on March 6, 1943, (effective March 16, 1943) under which the yardmen were to man the five drills in question. The answer further contended that the District Court was without jurisdiction to determine the controversy presented by the petition. (R. 25-29, incl.)

The matter was referred to a Master. (R. 29-30.) The Master took evidence and submitted an intermediate and final report. It was the opinion of the Master that both the agreements of March 7, 1940, and March 6, 1943, involved conditions that could be made

> " . . . the subject of agreement between the carrier and the respective employees concerned in them . . . but neither 'changed working conditions', within the meaning of the provisions of U. S. C. A., Title 11, Section 205 (n) and the Railway Labor Act, U. S. C. A., Title 45. That being so, it is the opinion of the Master that this Court has jurisdiction to entertain this petition and make a decision upon the merits." (R. 35.)

From the above and other portions of the Master's reports, it is clear that the Master concluded that the District Court did not have jurisdiction if the proposed displacement of road conductors by yard conductors would constitute a change in "working conditions" within the meaning of the sections of the Bankruptcy Act and Railway Labor Act which he referred to.

The Master also recommended that the five drills in dispute be manned by yard conductors. (R. 39-45, incl.)

The District Court decided that it had jurisdiction over the subject matter, confirmed the Master's reports and entered an order directing the trustees to carry out the terms of the contract of March 16, 1943, with the BRT. With respect to Section 6 of the Railway Labor Act, the District Court held:

> "The said agreement effective March 16, 1943, is in nowise in violation of U. S. C. A., Title 11, Section 205 (n) or Sections 151 to 163 of the Railway Labor Act, as amended, U. S. C. A., Title 45." (R. 53.)

This holding, like the recommendation of the Master, was based upon the assumption that the proposed displacement of road conductors by yard conductors would not constitute a change in "working conditions" requiring thirty-days notice under the Railway Labor Act.

From this judgment, the petitioners appealed. In the Circuit Court, petitioners argued that the District Court had erred in holding that the agreement between the trustees and the BRT, dated March 16, 1943, did not change "working conditions" within the meaning of Section 6 of the Railway Labor Act. It requested that Court to adjudge the contract of March 16, 1943, between the trustees and BRT to be invalid insofar as it affected the class or craft of road conductors represented by the ORC on the five Standard Oil and Bayway drills, and asked that the road conductors on such drills be returned to the jobs from which they had then been displaced.

The Circuit Court found that the District Court had *no jurisdiction to grant the relief requested and issued an order vacating the judgment of the District Court and remanding the proceeding to that Court "for dismissal (of petition) without prejudice* to any action or proceeding not in conflict with the Railway Labor Act. . . ." The reasons underlying the action of the Circuit Court are best expressed by the following from its opinion:

"In this case, each Brotherhood has in force a basic agreement with the carrier relating to rates of pay, rules, and working conditions; and each craft of conductors involved in the controversy maintains its own seniority roster. The thirty-day notice required by Section 6 of the Railway Labor Act of an intended change in rates of pay, rules, or working conditions was not given, and no effort was made to proceed in the manner prescribed by the Act. If the conductors should be displaced on the five drills in question, in contravention of the basic agreement, the volume of work available for members of that craft would be curtailed by that amount, and in the event of a sufficient diminution in business of the carrier those lowest on the roster would that much sooner be assigned to other runs, or be temporarily demoted to service as brakemen, or be without employment. And at the same time yard conductors would gain advantage in inverse order. *Therefore the proposed displacement of road conductors with yard conductors did involve a change in working conditions, within the sweep of the Railway Labor Act. And the remedy prescribed by the Act was exclusive. Switchmen's Union v. National Mediation Board, supra; General Committee of Adjustment v. Missouri-Kansas-Texas Railroad Co., supra; General Committee of Adjustment v. Southern Pacific Co., supra.* (Emphasis added.)

"Reliance is placed upon Section 24 (8) of the Judicial Code, 28 U. S. C. A. § 41 (8) to sustain jurisdiction. The section vests in the district courts jurisdiction of all suits and proceedings arising under any law regulating commerce. That is a broad grant of general jurisdiction, and it does not have application in a case of this kind where Congress has made specific provision for the protection of the right which it created. Switchmen's Union v. National Mediation Board, supra. We think the petition failed to submit any right which was presently appropriate for protection or enforcement by judicial decree." (R. 58-59.)

Notwithstanding that the Circuit Court held that "the petition failed to submit any right which was presently appropriate for protection or enforcement by judicial decree,"

it proceeded thereafter by way of obiter dictum to add the following:

> "But if we should be mistaken in respect of the lack of jurisdiction, the yard[3] [road] conductors are not entitled to prevail on *the merits*. . . ." (Emphasis added.) (R. 59.)

This statement and the subsequent remarks of the Court reveal that it regarded "the merits" of the case as raising the question of whether the agreement of the ORC should be enforced as a matter of equity, when considered apart from the provisions of the Railway Labor Act, *and not whether the ORC had a right to require the trustees to comply with Section 2, Seventh, and Section 6* when changing an agreement affecting working conditions.

On October 19, 1944, the petitioners filed a petition and brief for rehearing. They argued that, the Circuit Court having held that "the proposed displacement of road conductors with yard conductors did involve a change in working conditions, within the sweep of the Railway Labor Act," the Court was thereafter under a statutory duty to direct the District Court to order the trustees to comply with the thirty-day notice provision and other requirements of Section 6 of that Act and subsection (n) of Section 205 of Title 11, U. S. C. (R. 63-75)

The petition for rehearing was denied November 16, 1944, without opinion. (R. 78.)

QUESTIONS PRESENTED.

(1) Did the District Court have jurisdiction and was it under a duty to restrain its trustees in bankruptcy from changing working conditions within the sweep of the Railway Labor Act in violation of Section 2, Seventh, and Section 6 of the Railway Labor Act and subdivision (n) of Section 77 of the Bankruptcy Act?

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[3] See correction of opinion where the word "yard" was changed to read "road." (R. 77.)

(2) If the Circuit Court's conclusions with reference to what it called "the merits" are considered as more than mere dictum and as having any bearing on Question (1), did the Circuit Court err in holding that the petitioners are not entitled to prevail on "the merits"?

SUMMARY OF ARGUMENT.

I.

Subdivision (n) of Section 77 of the Bankruptcy Act contains an unequivocal requirement that no judge or trustee acting under that Act shall change the wages or working conditions of railroad employees except in the manner prescribed in the Railway Labor Act, as amended. Section 2, Seventh, and Section 6 of the Railway Labor Act prescribe the procedure that shall be followed by carriers and representatives of employees intending to change agreements affecting working conditions. By virtue of the bankruptcy proceeding, the District Court had exclusive jurisdiction over the debtor carrier and its property, and the trustees thereof were agents of that Court. It was just as much the duty of the Court to require the trustees to obey the Railway Labor Act which had been made specifically applicable to employees of railroads in bankruptcy as it was to require obedience to the many other laws which fix the duties and functions of trustees. Moreover, as parties to the contract which the trustees intended to change, the petitioners had the legal right and the standing to insist that the trustees be restrained from violating the law to their detriment. They had no other forum to which they could go to enforce such right.

Not only does Section 77 of the Bankruptcy Act confer jurisdiction upon the District Court to grant the relief requested by petitioners but the provisions of the Railway Labor Act confer such jurisdiction as well. Section 2, Seventh, of the Act provides that no carrier shall change the working conditions of its employees as a class as em-

bodied in agreements except in the manner prescribed in such agreements or in Section 6 of the Act. Section 1 of the Act defines "carrier" to include "trustee" and "judicial" body when in the possession of the business of any such carrier. The Circuit Court held that "the proposed displacement of road conductors with yard conductors did involve a change in working conditions, within the sweep of the Railway Labor Act." Since the Act thus prohibits the Court and its trustees from making such change unless it is made in the manner prescribed in Section 6 and since the Court determined that a change was being made, it was under a duty to compel the trustees to comply with the procedure prescribed in Section 6.

In addition to Section 77 of the Bankruptcy Act and Sections 2, Seventh, and 6 of the Railway Labor Act, Sections 24(8) and 24(19) of the Judicial Code, 28 U. S. C., Sections 41(8) and 41(19), also confer jurisdiction upon the District Court to grant the relief requested. Section 24(8) confers jurisdiction upon the district courts of all suits and proceedings arising under any law regulating commerce and Section 24(19) confers like jurisdiction of all matters and proceedings in bankruptcy.

The Circuit Court wrongly assumed that it was powerless to prevent its own trustees from violating subdivision (n) of Section 77 of the Bankruptcy Act and Section 6 of the Railway Labor Act because it assumed the latter Act provided an exclusive remedy for the enforcement of such section. The Circuit Court cited *Switchmen's Union* v. *Board*, 320 U. S. 297; *General Committee* v. *M.-K.-T. R. Co.*, 320 U. S. 323; *General Committee* v. *Sou. Pac. Co.*, 320 U. S. 338, as requiring it to reach this conclusion. Obviously, these decisions have no application to the issue presented in this case as they are not even remotely related to the question of whether a district court is authorized or required to compel its own trustees to comply with the mandatory provisions of the Railway Labor Act. There is no reason to search the background and legislative history of

the Railway Labor Act to determine whether Congress provided an administrative remedy or an exclusive remedy for the enforcement of Section 6 in order to decide whether the district court in a reorganization proceeding has the power or duty to enforce such section. The text of subdivision (n) of Section 77 of the Bankruptcy Act and Sections 1, 2, Seventh, and 6 of the Railway Labor Act has made that unnecessary. There the Congress made it clear that a court and its trustees in possession of a carrier under a bankruptcy proceeding are under a duty to comply with the Railway Labor Act when changing an agreement affecting working conditions.

Moreover, this Court has enforced rights of collective bargaining judicially under the Railway Labor Act where such rights are created by the Act and contain definite prohibitions of conduct or are mandatory in form. And this Court has recognized that the rights created by Section 2, Seventh, and Section 6 of the Railway Labor Act are mandatory in form.

Furthermore, the Railway Labor Act provides no administrative remedy for the enforcement of Section 2, Seventh, and Section 6 such as it does provide for the enforcement of the right involved in the *Switchmen's Union* case, *supra*. While the Circuit Court seemed to think that the Act did provide such a remedy it failed to point out what section of the Act provides it.

The Act establishes an elaborate procedure which is to be followed where a party to an agreement affecting working conditions desires to change same. Mediation, possible arbitration and possible presidential intervention are all provided in the Act. Petitioners have a right to have such procedure followed and unless it is followed the rights guaranteed petitioners by the Railway Labor Act and the Bankruptcy Act will be obliterated. This Court has recognized that if absence of jurisdiction of federal courts means such obliteration, the inference is strong that the federal courts have jurisdiction. If the action of the trustees here

indeliberately refusing to follow the procedures prescribed by the Railway Labor Act are condoned, petitioners have no way in which to enforce the right which Congress has created, namely the right that no change shall be effected in working conditions under agreements except in accordance with the procedures which such Act prescribes.

II.

The conclusion of the Circuit Court that road conductors were not entitled to prevail on the merits is mere dictum, but if it is regarded as more than dictum, it is erroneous and constitutes a patent error. The rules (ORC 34 and BRT 28 of the basic contracts between the Brotherhoods and the carrier), which the Circuit Court erroneously construed as meaning that road men had no right to work within switching limits, were taken verbatim from Rule XX(b) of General Order No. 27, promulgated by the Director General of Railroads during federal control during World War I. Supplement 20 of such General Order, issued by the Director General of Railroads April 22, 1919, expressly stated in part:

> "In some instances members of certain organizations of employees have demanded the removal of employees, some of whom have served many years in such positions, the demand being based upon the belief that the classification of employees named in certain supplements or wage orders established rights to make such demands.
>
> "No wage order or supplement thereto issued by the Director General has any such intent. These orders simply govern wages and working conditions of the employees found in such positions, and no employees will be removed from the service because of the language of any wage order or supplement thereto.
>
> "Questions of jurisdiction arising between organizations of employees must be adjusted between themselves, as the Director General has not and will not become involved in jurisdictional disputes between organizations of employees."

Later on December 15, 1919, in Supplement 24 to General Order No. 27 the Director General defined the words "road

service" appearing in Rule XX(b) in the sentence thereof reading "Where regularly assigned to perform service within switching limits yardmen shall not be used in road service when road crews are available, except in case of emergency" as meaning "any service for which road rates are paid." This interpretation makes it obvious that the controlling factor was whether or not the service was being paid road rates, not the place where the work was performed.

The Circuit Court erred in failing to give consideration to and in ignoring the historical origin of the rules and the interpretation and intent thereof given at the time by the Director General of Railroads.

Road conductors have manned the road drills in question as far back as there is any record on the railroad and continued to man them even after the establishment of switching limits in 1929 and until this proceeding. The United States Board of Arbitration in 1929 held that the identical road drills involved herein had always been recognized as road drills and that the service could not be reclassified from road service to yard service.

The practical interpretation placed upon Rule XX(b) by the contracting parties, as well as by the BRT, under actual working conditions from the establishment of switching limits in 1929 until this controversy developed in 1940 was in accordance with the orders and interpretations of the Director General of Railroads. The interpretation given the rule by the Circuit Court is diametrically contrary thereto. On March 7, 1940, the practical interpretation which had been placed on the rules from 1929 to 1940 without protest from any source was reduced to memorandum form and signed by the ORC and the carrier. This agreement provided there would be no change in the method of assigning the road conductors to the road drill jobs involved in this dispute" . . . except by agreement between the parties. . ."

Courts have universally held that the practical interpretation given a contract by the parties to it for any considerable period of time before it becomes the subject of controversy is deemed of great, even controlling, influence. This rule is particularly applicable to collective contracts involving the complex working conditions of railroad employees. The Circuit Court erred in failing to give consideration to this cardinal principle of law.

ARGUMENT.

I.

The District Court Had Jurisdiction and Was Under a Duty to Restrain Its Trustees in Bankruptcy From Changing Working Conditions Within the Sweep of the Railway Labor Act in Violation of Section 2, Seventh, and Section 6 of the Railway Labor Act and Subdivision (n) of Section 77 of the Bankruptcy Act.

The Circuit Court found that the proposed displacement of road conductors by yard conductors involved a change in working conditions within the provisions of the Railway Labor Act.[4] Since the Circuit Court did so find, it is clear that the District Court had jurisdiction and was under a duty to restrain its trustees in bankruptcy from making such change in violation of Section 2, Seventh, and Section

[4] See portion of Circuit Court's opinion quoted on p. 8, *supra*. While the court referred only to the basic agreement which the ORC has with the carrier in determining that the proposed displacement of road conductors with yard conductors did involve a change in working conditions within the meaning of the Railway Labor Act, the record shows that the ORC and the carrier also entered into a written agreement on March 7, 1940, providing that the method of assigning conductors to service on the five drills in question would not be changed except by agreement of the parties. This later agreement of 1940 also recited that the road conductors had manned such drills for many years. (R. 5.) Moreover, the conductors had in fact performed such service uninterruptedly for as far back as there was any record. (Ex. P-5, p. 1; Ex. T-13, p. 2.)

6 of the Railway Labor Act and subdivision (n) of Section 77 of the Bankruptcy Act.

The Master, the District Court and the Circuit Court, committed a common error. Each falsely assumed that if the proposed displacement of road conductors by yard conductors constituted a change in an agreement affecting "working conditions" within Section 2, Seventh, and Section 6, the court had no jurisdiction to entertain the petition of the ORC which sought to compel the trustees to comply with these provisions—because it further assumed that the Act provided an exclusive remedy for the enforcement of these sections. The Master and the District Court held that the proposed displacement did not involve a change in working conditions within the Act and concluded therefrom that the District Court had jurisdiction. The Circuit Court, on the other hand, after examining the facts and considering the law, held that the proposed displacement did constitute such change and concluded the courts had no jurisdiction—even to require compliance from its own trustees.

It is the position of the petitioners that the jurisdiction of the District Court to require the trustees to comply with these provisions of the Railway Labor Act depended precisely upon whether the proposed displacement of road conductors by yard conductors did constitute a change in an agreement affecting "working conditions." Once the court had determined that question in the affirmative, it was under a statutory duty to grant the requested relief.

A. The basis for the jurisdiction of the District Court.

1. Section 77 of the Bankruptcy Act (11 U. S. C., Sec. 205).

Subdivision (a) in part provides:

> "... Upon the filing of such a petition (petition for reorganization), the judge shall enter an order either approving it as properly filed under this section, if

satisfied that such petition complies with this section and has been filed in good faith, or dismissing it, if he is not so satisfied. If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. . . ."

Under subdivision (c) a judge in a bankruptcy reorganization proceeding is authorized to appoint one or more trustees of the debtor's property, and it is provided that

> "(2) . . . The trustee or trustees so appointed, upon filing such bond, shall have all the title and shall exercise, *subject to the control of the judge and consistently with the provisions of this section*, all of the powers of a trustee appointed pursuant to section 72 or any other section of this title, and, *to the extent not inconsistent with this section*, if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by Chapter 1 of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the debtor . . ." (Emphasis added.)

And subdivision (n) in part provides:

> ". . . No judge or trustee acting under this title shall change the wages or working conditions of railroad employees except in the manner prescribed in Sections 151 to 163 of Title 45, as amended June 21, 1934, or as they may be hereafter amended . . ."

From the provisions quoted, it is clear that a trustee in bankruptcy is an agent of the appointing judge and fully subject to his supervision and control in all matters affecting the management and operation of the debtor carrier.

Subdivision (n) is specific in its terms in requiring both the judge and the trustees to comply with the provisions of the Railway Labor Act with respect to the making of changes in wages or working conditions of railroad employees. They are just as much obliged to obey Section 6 of the Act as the many other laws which fix the duties and functions of judges and trustees in bankruptcy proceedings. They have no liberty of contract which can operate in diminution of these provisions. The District Court in which the reorganization proceeding was brought had exclusive jurisdiction over the debtor carrier and its property, and its agent trustees. There was no other forum to which the petitioners could go for the relief sought. As parties to the contract which the trustees were intending to change, the petitioners had the legal right and the standing to insist that the trustees be enjoined from violating the law. We submit, therefore, that the court had jurisdiction over both the respondent trustees and the subject matter of the petition.

These conclusions are fully supported by the decision of the Fifth Circuit Court of Appeals in *Peavy-Wilson Lumber Co. v. Loftin*, 131 F. (2d) 579. In that case the District Court was reversed for dismissing for lack of jurisdiction a petition of intervention in a railroad reorganization proceeding where the plaintiff company invoked the ancillary jurisdiction of the court to have it determine its rights under a contract with the railroad trustees, by which the plaintiff company claimed the trustees had agreed that they would not exercise their option under a contract to put their own crews on the plaintiff's engines and cars unless required to do so by lawful order of some governing body, state or federal. In passing upon the question of jurisdiction, the court at page 582 said:

> "We agree with appellant. Whatever may be said as to the right of the Brotherhoods to be dismissed from the action, it is quite clear that plaintiff's intervention presented matters between it and the trustees properly for the decision of the court. Indeed, in view

of the relief sought, control of the operations of railway properties in reorganization proceedings, the jurisdiction of no other court could properly have been invoked. It was reversible error then for the court to dismiss the intervention though without prejudice and with leave to proceed elsewhere. . . ."[5]

The Provisions of the Railway Labor Act.

Petitioners submit that not only does Section 77 of the Bankruptcy Act confer jurisdiction upon the District Court to grant the relief requested by petitioners but that the provisions of the Railway Labor Act confer such jurisdiction as well.

Section 2, Seventh, provides that

> "No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in Section 6 of this Act."

The term "carrier" is defined in Section 1 to include

> ". . . any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier' . . ."

By substituting the word "trustee" or "judicial body" for the word "carrier" in Section 2, Seventh, we have a definite and precise prohibition running against the Court and its trustees in this case—enjoining them from changing "working conditions," as embodied in agreements, except as prescribed in Section 6. Statutory language could scarcely be more clear and unambiguous. It fixed the power and duty of the Court and its trustees when seeking

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[5] The court's attention is also directed to the fact that under Section 24(19) of the Judicial Code, 28 U. S. C., Sec. 41(19), jurisdiction is conferred upon the district courts "Of all matters and proceedings in bankruptcy." This of itself is sufficient to sustain the district court's jurisdiction in the case.

to change the working conditions of employees of a carrier in their possession and control.

That a receiver and receivership court may not operate in disregard of the Railway Labor Act was definitely established by a decision of the Second Circuit Court of Appeals in *Burke v. Morphy*, 109 F. (2d) 572, cert. den., 310 U. S. 635. There the Rutland railroad was in receivership under a creditor's bill. The District Court issued an order directing the receiver to retain fifteen percent of the wages of the employees, such retained wages to constitute only general claims against the receivership. The Second Circuit Court held the order invalid because the District Court and receiver did not comply with the provisions of the Railway Labor Act with respect to changing agreements affecting wages and working conditions. It said (P. 575):

> "On the merits, we cannot find any legal justification for the order. The order did affect wages and was in substance a wage cut; no wage cut may be imposed unless the provisions of the Railway Labor Act, 45 U. S. C. A., § 151 et seq., are first obeyed; and no attempt was made to comply with this Act. The Railway Labor Act (48 Stat. 1185, 45 U. S. C. A. § 151) applies to every interstate carrier, including a carrier that is being operated by a receiver. The Act forbids any intended change in an agreement affecting rates of pay unless thirty days' notice is given to the other party to the agreement. Either party may call in the National Mediation Board, or the Board itself may proffer its services. Rates of pay may not be altered by the carrier until the Board has concluded its duties. 45 U. S. C. A., §§ 151-156; Railway Employees' Co-op. Ass'n. *v.* Atlanta, B. & C. R. Co., D. C. Ga., 22 F. Supp. 510."

In invalidating the order of the receiver, the Court relied wholly upon the provisions of the Railway Labor Act, holding that the Act was applicable to every interstate carrier "including a carrier that is being operated by a receiver." Subdivision (n) of Section 77 of the Bankruptcy Act was not involved as it has no application to railroad

receivers. The Court's conclusion was compelled by the definition in the Railway Labor Act of the term "carrier" to include "receiver" and "judicial" body in the possession of the business of a carrier. As the term "carrier" is also defined to include "trustee" and "judicial" body in the possession of the business of a carrier, it would follow that judges and trustees engaged in the operation and management of a carrier in bankruptcy are as much bound by the provisions of Section 2, Seventh, and Section 6 as receivers. The decision of the Third Circuit in the instant case is in direct conflict with the decison of the Second Circuit Court in *Burke* v. *Morphy, supra.*[6]

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[6] Petitioners also contend that jurisdiction was conferred upon the District Court by Section 24(8) of the Judicial Code, 28 U. S. C., Section 41 (8), which vests in the district courts jurisdiction "Of all suits and proceedings arising under any law regulating commerce." The Circuit Court held (R. 59) that Section 24(8) did not have any application to the case at bar "where Congress has made specific provision for the protection of the right which it created," citing *Switchmen's Union* v. *Board*, 320 U. S. 297. Earlier in its opinion the Court indicated that the "specific provision," to which it subsequently alluded, was some provision (without naming it) in the Railway Labor Act. As we shall show, *infra*, pages 23-24, there is no remedy provided in the Railway Labor Act for the violation of the petitioners' rights here asserted so that the basis of the Circuit Court's holding that Section 24(8) of the Judicial Code had no application falls. Moreover, the jurisdiction which Section 24(8) confers upon the district courts is reinforced by the specific conferral of jurisdiction in a case of this type by Section 77 of the Bankruptcy Act and Section 2, Seventh, and Section 6 of the Railway Labor Act. And even if the Circuit Court was correct in its holding that Section 24(8) of the Judicial Code had no application to the case at bar, it is enough to sustain jurisdiction that Section 77 of the Bankruptcy Act and Section 2, Seventh, and Section 6 of the Railway Labor Act confer such jurisdiction upon the District Court.

B. The Circuit Court erred in holding that the question of jurisdiction in the instant case was governed by the decisions of this court in Switchmen's Union v. Board; General Committee v. M.-K.-T. R. Co.; General Committee v. Sou. Pac. Co, supra.

The Circuit Court concluded it had no power to grant relief to the petitioners because the Act provided an exclusive remedy with respect to the enforcement or violation of Section 2, Seventh, and Section 6, and referred to the cases cited above. We think it is obvious that these decisions have no application to the facts of this case. They did not involve the power of the District Court to direct its agents to act in accordance with the law in matters where the Court itself is burdened with ultimate responsibility. Moreover those decisions related to controversies arising under the Railway Labor Act where the statute was silent on the jurisdiction and duty of the Court. In the instant case the duty and power of the Court has been made plain by subdivision (n) of Section 77 of the Bankruptcy Act and the provisions of the Railway Labor Act. It is unnecessary to make any extensive inquiry here as to the province of the courts as the Congress has stated in unmistakable language what the courts shall do.

Moreover, the courts have readily enforced the mandatory provisions and definite prohibitions of the Railway Labor Act, such as those involved in Section 2, Seventh, and Section 6, even as against carriers which are not in the possession and control of bankruptcy trustees. *Texas & N. O. R. Co.* v. *Ry. Clerks*, 281 U. S. 548, and *Virginia Ry. Co.* v. *Federation*, 300 U. S. 515.

In *Stark* v. *Wickard*, 321 U. S. 288, at pages 306 and 307, the court made reference to the decision in the *Switchmen's Union* and related cases and then stated:

> "But where rights of collective bargaining, created by the same Railway Labor Act, contained definite prohibitions of conduct or were mandatory in form, this Court enforced the rights judicially."

This Court recognized that the provisions of Section 2, Seventh, and Section 6 were mandatory in form in *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50, when it stated at page 51,

> "... Under the statute, no change in rates of pay, rules, working conditions or established practices can be made for thirty days, unless in that time the parties agree to arbitration or an emergency board is created under § 10. ..."

Then in *Telegraphers* v. *Ry. Express Agency*, 321 U. S. 342, this Court held invalid individual contracts which had been executed by the carrier and employees without regard to the collective bargaining contract.

> "We hold that the failure of the carrier to proceed as provided by the Railway Labor Act of 1926, then applicable, left the collective agreement in force throughout the period and that the carrier's efforts to modify its terms through individual agreements are not effective. ..." (P. 347.)

See also *Railway Employees' Co-op. Ass'n.* v. *Atlanta, B. & C. R. Co.*, 22 F. Supp. 510 (D. Ga. 1938), where a district court granted an interlocutory injunction requiring the carrier to maintain and keep in force a collective agreement until a representation dispute had been determined by the National Mediation Board.

Furthermore, unlike the situation in the *Switchmen's Union* case above referred to, the Railway Labor Act provides no administrative remedy for the enforcement of Section 2, Seventh, and Section 6. The Circuit Court held that the remedy prescribed by the Act for enforcement of Section 2, Seventh, and Section 6, was exclusive. But it gave no indication in its opinion as to what remedy had been provided. Obviously, however, it referred to some administrative or non-judicial remedy as it held that the district court had no jurisdiction to enforce Section 6. We submit that not only is there no remedy prescribed in the

Railway Labor Act which is exclusive but that no remedy at all is prescribed by such Act.

In the *Switchmen's Union* case the Switchmen's Union sought to have cancelled a certification by the National Mediation Board of representatives for collective bargaining under Section 2, Ninth, of the Railway Labor Act. The Court held that under Section 2, Fourth, of the Act, the majority of any craft or class of employees were given the "right" to determine who shall be the representative of the craft or class for purposes of the Act and that such "right" was protected by Section 2, Ninth, giving the Board the right to resolve controversies concerning it. Congress thus selected the method for protecting the "right," namely, administrative determination by the National Mediation Board. The specification of that remedy excluded all others and the federal courts were therefore held to have no jurisdiction to review the Board's determinations. The present case is not comparable. Here Section 2, Seventh, and Section 6 of the Act provide that no changes in agreements affecting working conditions shall be made except pursuant to a certain prescribed procedure. That procedure was not followed and the Act provides no administrative "remedy" here as was provided for the right involved in the *Switchmen's Union* case.

It has been suggested by opposing counsel that the sole remedy provided by the statute for the illegal action of the trustees is the right of the aggrieved employees, if any, to prosecute time claims before the Adjustment Board under the provisions of Section 3(i). This section, however, does not purport to reach a dispute which involves a change in working conditions without the giving of notice as required by Section 6. It is confined rather to grievances growing out of the interpretation of existing agreements. Furthermore, this court held in *Moore* v. *Illinois Central R. Co.*, 312 U. S. 630 and *Washington Terminal Co.* v. *Boswell*, 124 F. (2d) 235 (App. D. C.), affirmed by this Court in an equally divided opinion, (319 U. S. 732) that such administrative remedies as are available through the Adjustment Board

are not exclusive and do not prevent the bringing of a court action under a contract.

C. A denial of jurisdiction would destroy and obliterate rights guaranteed by the Railway Labor Act.

The Circuit Court having held and determined that the proposed change in working conditions was within the sweep of the Act, the petitioners are entitled to compliance with the procedure set forth in Section 6. This procedure was a part of the machinery which was established to avoid interruption to commerce and to provide the prompt and orderly settlement of disputes.

The provisions of Section 2, Seventh, and Section 6 of the Railway Labor Act not only provide that there shall be no changes in rates of pay, rules, working conditions or established practices without the giving of the thirty days' notice, but Section 6 further provides that where notice of an intended change has been given and conferences are being held, or the services of the Mediation Board have been requested by either party, or the Board has proffered its services,

> " . . . rates of pay, rules, or working conditions *shall not be altered* by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after a termination of conferences without request for or proffer of the services of the Mediation Board." (Emphasis added.)

The procedure which the petitioners are thereafter entitled to have followed is clearly and concisely summarized by Mr. Justice Rutledge in *Elgin, Joliet & Eastern R. Co. v. Burley*, 89 L. ed. 1328, 1336-1337, as follows:

> ". . . . 'Major disputes' go first to mediation under the auspices of the National Mediation Board; if that fails, then to acceptance or rejection of arbitration, cf. § 7; Brotherhood of R. Trainmen E. L. *v.* Toledo, P. & W. R. Co. 321 U. S. 50, 88 L ed 534, 64 S Ct 413,

150 ALR 810; and finally to possible presidential intervention to secure adjustment. Section 10. For their settlement the statutory scheme retains throughout the traditional voluntary processes of negotiation, mediation, voluntary arbitration, and conciliation. Every facility for bringing about agreement is provided and pressures for mobilizing public opinion are applied. The parties are required to submit to the successive procedures designed to induce agreement. Section 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute and no such power is intended, unless the parties themselves agree to arbitration."

It must be clear that, unless the District Court has jurisdiction to enjoin a carrier seeking to deliberately and calculatingly bring about a change, contrary to the command of the statute and in direct violation of its explicit terms, and, particularly, when that carrier is under the jurisdiction of the court in bankruptcy, the rights guaranteed by the Act will have been obliterated and the objects and purposes, which Congress was seeking to obtain, destroyed.

In *Switchmen's Union* case, *supra*, this Court prefaced its views with the statement, (320 U. S. App. 300):

> "If the absence of jurisdiction of the federal courts meant a *sacrifice or obliteration of a right* which Congress had created, the inference would be strong that Congress intended the statutory provisions governing the general jurisdiction of those courts to control. That was the purport of the decisions of this Court in *Texas & New Orleans R. Co.* v. *Brotherhood of Clerks*, 281 U. S. 548, and *Virginian Ry. Co.* v. *System Federation*, 300 U. S. 515. In those cases it was apparent that but for the general jurisdiction of the federal courts there would be no remedy to enforce the statutory commands which Congress had written into the Railway Labor Act. The result would have been that the "right" of collective bargaining was unsupported by any legal sanction. *That would have robbed the Act of its vitality and thwarted its purpose. . . .*" (Emphasis added.)

The carrier had an explicit command by the provisions of Section 2, First, of the Act to "maintain" the agreements and was also prohibited from *changing* agreements except by giving the thirty-day notice under the provisions of Section 2, Seventh, and Section 6 of the Act, and the provisions of Section 7 (m) of the Bankruptcy Act, and then following the procedure above summarized.

The Mediation Board took the position that it had no jurisdiction herein as the carrier had advised it "... that it has filed no notice of a desire to change existing agreements nor does it propose to do so ..." The change, which the Circuit Court held and determined was a change in working conditions within the Act, was a change deliberately and calculatingly brought about by the railroad trustees appointed by the District Court. If the deliberate and willful misconduct of the trustees in the case at bar in refusing to give notice of any proposed change in working conditions and their summary and arbitrary action are condoned by this Court, petitioners have no way in which to enforce the "right which Congress [has] created" in the Railway Labor Act and the Bankruptcy Act to have the procedure above summarized followed. A denial of jurisdiction would thus mean a "sacrifice or obliteration of a right which Congress [has] created."

II.

If the Circuit Court's Conclusions With Reference to What it Called "The Merits" Are Considered as More Than Mere Dictum and as Having any Bearing on the First Question Presented, Such Conclusions Are Erroneous.

We submit that the Circuit Court, having held that it had no jurisdiction and having remanded the case to the District Court for dismissal without prejudice to the ORC's taking such steps as might be available to it under the Railway Labor Act, should not have undertaken to express its views upon what it called the merits of the controversy, thereby

prejudicing the ORC before any tribunal to which it might go.

While such views, we submit, are but dictum, nonetheless the conclusions which the Court reached in such dictum are erroneous and contrary to law. In the Petition for the Writ of Certiorari herein, it was stated:

> "The statement of the Circuit Court on what it termed 'the merits' of the case, we submit, must stand as mere dictum in view of the court's decision on the jurisdictional question and its final order in the case. Should this court disagree with this contention, we ask that the whole of the opinion of the Court below be reviewed to the extent necessary to determine the 'Question Presented' and afford the petitioners the relief essential to the enforcement of Section 6 of the Railway Labor Act against the defendant trustees."

In the brief of the BRT in opposition to the granting of the writ, it was argued that the portion of the opinion of the Circuit Court referred to as "the merits" was not dictum. Should this Court determine that what the Circuit Court said with reference to "the merits" has any bearing directly or indirectly upon the first question presented, we desire to point out wherein the Circuit Court was in error in its statements.

A. The Circuit Court erred in its interpretation of the rules in the basic agreements of the Brotherhoods with the carrier in failing to give consideration to the historical background and interpretation of Rule XX(b) in General Order No. 27 promulgated by the Director General of Railroads during federal control, which rule XX(b) appears in the ORC contract as Rule 34 and in the BRT contract as Rule 28.

The proper presentation of this point involves a consideration of some additional facts of record and exhibits. The petitioner ORC operates for the carrier under a basic schedule or contract, (Ex. T-1), effective August 1, 1927. The respondent BRT operates for the carrier under a basic schedule or contract, (Ex. T-9), effective May 1, 1928.

In the ORC basic contract (Ex. T-1, pp. 17 and 19), under the caption, Inland Yard Service, there is found rule No. 34 which provides as follows:

> "Where regularly assigned to perform service within switching limits yardmen shall not be used in road service when road crews are available, except in case of emergency. When yardmen are used in road service under conditions just referred to, they shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed; in addition to the regular yard pay, and without any deduction therefrom for the time consumed in said service."[7]

The identical rule appears in the BRT basic contract (Ex. T-9, p. 14) as Rule 28, under the title, "Yard Service," as one of the rules under which BRT *yard* conductors and *yard* brakemen work in the New York Harbor Terminal territory.

These rules were taken verbatim from Interpretation No. 1 to Supplement No. 24 to General Order No. 27,[8] dated December 15, 1919, of the United States Railroad Administration, promulgated while the railroads were under the Director General of Railroads during World War I and following. Article XX found on page 15 of the aforesaid interpretation reads as follows:

> "ARBITRARIES AND SPECIAL ALLOWANCES."
>
> "(a) Where it has been the practice or rule to pay a yard engine crew or either member thereof arbitraries or special allowances, or to allow another minimum day for extra or additional service performed during the course of or continuous after the end of

[7] ORC, in addition to representing the class and craft of *road* conductors, also represents the class and craft of *yard* conductors in the Inland Yards of the carrier, which explains why the above rule in the ORC agreement is found under the caption, "Inland Yard Service" (Ex. T-1, p. 19).

[8] General Order No. 27, together with its supplements and interpretations, referred to in this brief, are on file among the United States Railroad Administration records in the National Archives, Washington, D. C.

the regularly assigned hours, such practice or rule is hereby eliminated, except where such allowances are for individual service not properly within the scope of yard service, or as provided in section (b).

"(b) Where regularly assigned to perform service within switching limits yardmen shall not be used in road service when road crews are available, except in case of emergency. When yard crews are used in road service under conditions just referred to, they shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed, in addition to the regular yard pay and without any deduction therefrom for the time consumed in said service."

Paragraph XX (a) sets forth the purpose of the rule. The rule itself, as incorporated in the basic agreement of the two unions, is XX (b).

Rule XX (b) could not be effectively applied unless switching limits were established by the carrier. The record in this case conclusively demonstrates and, in fact, all parties concede, that the carrier by its bulletin of August 12, 1929 (Ex. T-3) established switching limits for the Elizabethport yard. The carrier had the right, in the first instance, to establish switching limits. (Ex. T-6 and Ex. T-3). In concurring in the action of the carrier in establishing switching limits, in Ex. T-6, dated May 11, 1929, the General Chairman of the ORC stated in part:

"Personally I have never disputed the right of the carrier to establish switching limits, knowing that supplement No. 25[9] of general order No. 27 conceded that privilege to them. Rule No. 34 of the present agreement for Conductors is verbatim of paragraph (B) as switching limits are defined in supplement No. 25 of general order No. 27. I have always been of the

[9] Interpretation No. 2 to Supplement No. 25 to General Order 27, issued by the Director General of Railroads, on p. 9, also quotes and sets forth Rule XX(b). In this Supplement No. 25 what we set forth below, pp. 33-34, as Question 24, concerning Supplement No. 24 and the decision with respect thereto is again set forth as Question 28 with the same decision.

belief that Roust-a-bout or Road-Drill service fulfilled the requirements of switching districts which owing to the slight differential on the wage apparently caused very little friction between the Company and their Conductors.

"I am of the opinion that this movement will in time increase the yard limits to meet the requirement of your proposed switching limits, but there is as I can see in them the element of safety co. ibined therein. *From a survey of the blue print practically all the points mentioned are at the present time taken care of by Road Drills.*" (Emphasis added.)

The Elizabethport yard is shown on the map (R. 20 A) and is confined to the space marked in black ink. According to the scale of the map it covers an area approximately one mile long and one-half mile wide. The actual *yard limits* are represented by the confines of the yard.

In establishing the *switching limits* of the Elizabethport yard, the Southerly boundary was defined as Morse's Creek which is where the red line terminated at the South. The map indicates that said point and the other terminating points of the switching limits extend several miles in each direction from the yard. It must be observed that Yard Limits and Switching Limits are not synonymous.

The BRT has endeavored to becloud the situation by arguing an unwarranted and impossible construction of rule XX (b), i.e., that upon the carrier's exercising its absolute right and prerogative of establishing switching limits, all work or service therefofore performed by road men, for which road rates were paid, was immediately and automatically reclassified so that thereafter *all work or service* of whatever character within switching limits became work which the yard men were exclusively entitled to perform.

The Circuit Court in its opinion on what it termed "the merits" does not expressly refer to either Rules 34 and 28 or Rule XX (b). It does state, however, (R. 59):

". . . The purpose of establishing the boundaries of the yard[10] was to fix a line of demarcation between road service and yard service. It was to designate a line beyond which yard conductors should not go, and inside of which road conductors should not work, except in cases of emergency . . ."

It is thus apparent that, in its consideration of what it regarded as the equities of the case apart from and independent of the provisions of the Railway Labor Act and Section 77 (n) of the Bankruptcy Act, the circuit court adopted the erroneous construction and interpretation of Rule XX (b) argued by the BRT and adopted by the Master.

That the BRT is seeking to place a construction upon Rule XX (b), which was never intended, is further shown by another order of the Director General of Railroads, namely, Supplement 20 to General Order No. 27, issued April 22, 1919. In such Supplement the Director General clearly and unequivocably ruled and directed that no wage order or supplement thereto issued by the Director General should ever be used as a basis for a reclassification of service. The said supplement is herewith given in full:

"SUPPLEMENT NO. 20 TO GENERAL ORDER NO. 27.

Washington, April 22, 1919.

Interpretation of All Wage Orders Issued by the Director General.

From time to time my attention has been called to claims made by employees that a wage order or supplement thereto has established jurisdiction for certain organizations of employees over all employees named therein.

In some instances members of certain organizations of employees have *demanded the removal* of employees, some of whom have served many years in such positions, the demand being based upon the belief that

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[10] Apparently the Court considered *yard* and *switching* limits synonymous.

the classification of employees named in certain supplements or wage orders established rights to make such demands.

No wage order or supplement thereto issued by the Director General has any such intent. These orders simply govern wages and working conditions of the employees found in such positions, and no employees will be removed from the service because of the language of any wage order or supplement thereto.

Questions of jurisdiction arising between organizations of employees must be adjusted between themselves, as the Director General has not and will not become involved in jurisdictional disputes between organizations of employees. (Emphasis added)

WALKER D. HINES,
Director General of Railroads."

Subsequent to the issuance of General Order No. 27[11] the Commission working with the Director General made recommendations as to certain additional rules. Questions arose from time to time under the rules as thus promulgated. The United States Railroad Administration on May 13, 1920, by the Director General of Railroads Walker D. Hines, issued interpretation No. 2 to Supplement No. 24 to General Order No. 27. (Appendix, *infra*, pp. 52-55) At Page 8 of this interpretation, Article XX (b), which we have quoted above (p. 30), is again set forth and is followed by certain questions and answers showing the application and interpretation of the rule. Question 24 and the decision thereto are set out as follows:

"Question 24.—What is the intent of the words 'road service' as used in this section?

[11] General Order No. 27 was originally issued by Director General of Railroads William G. McAdoo. It specified what railroads should be affected by wages, hours and other conditions of employment under federal control and named the Central R. R. Co. of New Jersey, the carrier herein, as one of such railroads (Page 9 of the Order).

Decision.—Any service for which road rates are paid.'"[12]

By substituting the definition of "road service" as given by the Director General of Railroads for the words "road service", Rule XX (b) would then read:

> "Where regularly assigned to perform service within switching limits yardmen shall not be used in any service *'for which road rates are paid'* when road crews are available, except in case of emergency." (Emphasis added)

When the rule is read with the official interpretation given to the words "road service" by the Director General its true meaning is clear. The rule was not in any sense a limitation or restriction upon road men receiving road rates; it did not say that upon the establishment of switching limits yard men should have the exclusive right to all service within said limits; it did not provide that road men should not work within said limits; it was, on the contrary, a limitation placed upon the yard men. The yard men regularly assigned to work within switching limits were clearly not be used in any service "for which road rates are paid".

There was no geographical limitation placed upon the road men. The controlling factor in the rule was whether or not the service was one "for which road rates are paid" and not within what area the work was being done. It related to a type and character of service—not the place where the work was performed.

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[12] Article XXIII of Supplement No. 24 is likewise set forth at Page 9 of this same interpretation. This rule reads, in part, as follows:

> "The rates of pay and rules herein established shall be incorporated into existing agreements and into agreements which may be reached in the future on the several railroads. . . ."

In the interpretation and construction of legislative acts the Supreme Court of the United States and the United States Circuit Courts of Appeals have repeatedly stated that the historical background of legislation is one of the most persuasive guides in the interpretation of a Congressional enactment. *United States* v. *American Trucking Associations*, 310 U. S. 534; *Helvering* v. *New York Trust Company*, 292 U. S. 455; *Norwegian Nitrogen Products Company* v. *U. S.*, 288 U. S. 294; *The Penza*, 9 F. (2d) 527 (C. C. A. 2); *Genesee Trustee Corp.* v. *Smith*, 102 F. (2d) 125 (C. C. A. 6).

We contend that rules No. 31 and 28 standing alone in the basic agreements are not susceptible of the interpretation placed upon them by the Circuit Court, to the effect that when switching limits are established road men should no longer have any right to work within said limits. Whatever interpretation might be placed upon said rules, in the absence of any historical background as to their origin, we submit that in view of the promulgation of the rules by the Director General, and his definition of the words "road service" as meaning "any service for which road rates are paid" together with his supplement No. 20 above set forth, there is no basis under which said rules can be construed or interpreted as meaning that road men, by the mere establishment of switching limits, shall no longer have any right to work within the confines thereof, and be required to forfeit their jobs to the yardmen.

B. The Circuit Court erred in failing to give consideration to established practices and to interpretations which the parties themselves had given the rules over many years.

It is a cardinal principle of construction in all cases that the interpretations which the parties themselves have placed upon a contract will be entitled to great, if not controlling, consideration in determining its proper interpretaton. This

has been particularly true of collective bargaining contracts between railroad employees and carriers.

In *Elgin, Joliet & Eastern R. Co.* v. *Burley*, 89 L. Ed. 1328, Mr. Justice Rutledge in the majority opinion stated (p. 1347):

> "... The rules are extensive, parts of them appear to involve possible conflict, the parties differ concerning their effects, and the mode of their operation quite obviously may be largely affected by the manner in which they are applied in practice. Their construction and legal effect are matters of some complexity and *should not be undertaken in a vacuum apart from the facts relating to their application in practice*..." (Emphasis added.)[13]

In Brotherhood of Railroad Trainmen, et al. v. *National Mediation Board*, 135 F. (2d) 780, (App. D. C.), "established practice" was given great weight. The Court, in that opinion, stated (p. 782):

> "... The operation of the yards in accordance with this scheme has been carried on for more than twenty years. *Customs have been established and rights have accrued.* In these circumstances, and especially in view of the fact that the Trainmen freely participated in the formation of the present craft or class lines, it is of no consequence that at one time the rights and duties of the two crafts or classes were different.... And the Board's authority to determine who is the representative of a craft or class does not include authority to define the type of work that each craft or class must do. This, in substance, is what we held in Brotherhood of Railroad Trainmen v. National Mediation Board, 66 App. D. C. 375, 88 F. (2d) 757." (Emphasis added.)

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[13] *Cf.* the dissenting opinion in the same case, in which Mr. Justice Frankfurter stated (p. 1350):

> "... the intricate technical aspects of these agreements [referring to the collective bargaining agreements] and the specialized knowledge for which their interpretation and application call, the practical interdependence of seemingly separate collective agreements—these and similar considerations admonish against mutilating the comprehensive and complicated system governing railroad industrial relations by episodic utilization of inapposite judicial remedies."

In *Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50, the carrier had sought an injunction against a long continued railroad dispute relating to working conditions and rates of pay. In the course of the opinion the Court said (p. 51):

> "... Under the statute, no changes in rates of pay, rules, working conditions or *established practices* can be made for thirty days, unless in that time the parties agree to arbitration or an emergency board is created under paragraph 10 ..." (Emphasis added)

In *Old Colony Trust Co.* v. *Omaha*, 230 U. S. 100, Mr. Justice Van Devanter, at page 118, stated:

> "Generally speaking, the practical interpretation of a contract by the parties to it for any considerable period of time before it comes to be the subject of controversy is deemed of great, if not controlling, influence, *Chicago* v. *Sheldon*, 9 Wall. 50, 54; *Insurance Co.* v. *Dutcher*, 95 U. S. 269, 273; *District of Columbia* v. *Gallaher*, 124 U. S. 505, 510; *School District* v. *Estes*, 13 Nebraska, 52; *State ex. rel.* v. *Commissioners of Cass County*, 60 Nebraska 566, 572. Although not strictly such, this rule is sometimes treated as a branch of the law of estoppel. Whether in a case permitting the exercise of an independent judgment we should apply it to franchise contracts such as the one here, we need not consider. In Nebraska, according to the settled course of decision in that jurisdiction, the rule is applicable to them."

ORC's basic collective contract became effective August 1, 1927 (Exhibit T-1). Rule 12 thereof (p. 12) provides "(c) Conductors ... *including road drill service* ... will be paid the local freight rate." (Emphasis added). Rules 14 and 17 (pp. 14 and 15) provide for the computation of overtime. Rule 23 (p. 17) provides that "Conductors on ..., road drills" will be allowed time for lunch without reduction in pay. Rule 35 (p. 20) establishes a seniority district for road freight conductors at Elizabethport. Rule 36 (p. 21) provides for the manner of the exercise of seniority and choice of "runs".

BRT's basic collective contract (Exhibit T-9) became effective May 1, 1928. In 1929 BRT, as the representative

of both *road* and *yard brakemen*, requested the carriers to reclassify the service as far as *brakemen* was concerned on the five road drills in question and take the work away from the *road brakemen* and give it to the *yard brakemen* (Ex. T-13, p. 1). The carrier refused the request of the BRT and the matter was submitted as a dispute between the carrier and the BRT to the United States Board of Arbitration.

On April 26, 1929, the United States Board of Arbitration rendered a decision concerning the very same three Bayway road drills and two Standard Oil road drills involved in this litigation and which decision held the service was *road service*. ORC was not a party to this proceeding as it did not affect *road conductors*. ORC did, however, at that time, protest any reclassification of the recognized "road service" into "yard service" that would affect road *conductors*. (Ex. P-11). The Board in its decision held:

> " . . . The evidence in this case shows that all of the runs in question have been recognized as *road drills* for many years . . .
>
> There can be no justification for *a reclassification of the service simply* to provide a higher rate of pay for the trainmen [brakemen] . . ." (Emphasis added) (Exhibit T-13, p. 2.)

In connection with the definition that "road service" meant "any service for which road rates are paid" and Rule XX (b) itself which provided, that if regularly assigned *yard* crews were used in "*road* service" they should be paid, as a penalty in addition to their regular pay, "miles or hours, whichever is the greater", it is significant that the rates of pay for *road men* set forth in the same interpretation No. 2 to Supplement No. 24 to General Order No. 27 to which reference has heretofore been made (p. 33 *supra*), provide for the payment of road men on the basis of "100 miles or less, 8 hours or less, shall constitute a day's

work;" (Article VII, Section A, page 1 of said interpretation). Reference to the basic collective contracts of the two unions in the case at bar also discloses (Ex. T-1, Rule 14, p. 14; Rule 26, p. 17; Ex. T-9, Rule 10, p. 11; Rule 20, p. 14) that *road* men are still paid on the basis of "miles or hours, whichever is the greater" and *yard men* are paid on an hourly rate.

The parties hereto do not dispute the fact that ORC road conductors have manned the five road drills in question for a period of thirty-five or more years. The Memorandum Agreement between the carrier acting through its Trustees and the ORC dated March 7, 1940, (Ex. T-2, also R. 5-6), gave written evidence of this established practice and the established interpretation of existing rules as embodied in the basic agreement. It recited in its preamble that "For many years, Road Conductors have performed all of the service on the Perth Amboy Branch, Bayway and points South, and all of the service on the Sound Shore Railroad." It further provided "No other change from the present method of assigning Conductors to service operated in the territory described in the preamble hereof, will be made *except by agreement* between the parties hereto." (Emphasis added.)

The switching limits, as previously stated, were established in 1929; *road* conductors had manned these *road* drills for many years prior to and since 1929; they were doing so without protest at the time of the March 7, 1940 agreement and said agreement was merely a written *recognition* of the established practice and interpretation of the basic agreements.

BRT represented *both yard brakemen* and *road brakemen* on the carrier and had the right to speak for both. Nevertheless, the men from the *road brakemen's* seniority roster continued to man the five road drills in question *after* the establishment of switching limits in 1929 and until August of 1940. At that time the carrier and BRT, upon request of the latter, agreed that the work would be taken

away from the *road brakemen* and given to the *yard brakemen*. Vice President Falck of the carrier then wrote to the ORC under date of August 5, 1940. (Ex. P-2 and R. 7):

> "I have conceded to the Trainmen the right to say whether these Bayway crews, and even the new road drill crews, should be manned *with road or yard brakemen* or trainmen. I refused, in accordance with our understanding, to permit them to man the road drills or these five crews with *yard conductors.*" (Emphasis added)

The carrier further recognized the petitioners' right to man these five drills with road conductors in its letter written by F. M. Falck, Vice-President, to W. L. Reed, Vice-President of the BRT, dated June 6, 1941, in which he stated (Ex. P-5):

> ". . . The Carrier has conceded that the territory in which the five Bayway crews operate is within the switching limits established in 1929 by concurrence of the Engineers, Firemen and Conductors, but in which the Trainmen have never concurred.[14] Unfortunately, the Conductors take the position *that road conductors from time immemorial*—and by that I mean as far back as there is any record prior to Federal Control, during Federal Control and subsequent to Federal Control; and, incidentally, during your own term as General Chairman of the Trainmen—*have manned these crews, and that until the present time no protest to the Management as to their doing so has ever been made* and the Conductors' Organization protest any change in the manning of these crews so far as the conductors are concerned."
>
> . . . . . .
>
> "As before stated, it can be shown by overwhelming evidence that the manning of these particular crews with road conductors has been in effect without protest over a long period of years; and it continued in effect from 1929, when the switching limits were established

[14] The evidence showed that Mr. Falck was in error in this respect. The Trainmen (BRT) concurred by letter of June 22, 1929 (Exhibit T-3).

. . . up to the present time without protest until the instant case . . .

. . . . . .

"In these circumstances the request that 'yard conductors' in the Elizabethport seniority district be substituted for *road conductors* on the five Bayway crews is declined". (Emphasis added.)

It is respectfully urged that even in the absence of any established practice or interpretation, Rule XX(b) cannot be construed as if it had provided "Roadmen shall not work inside of switching limits." And the established practice and interpretations above set forth make such construction even more untenable.

CONCLUSION.

The Circuit Court, having held that the proposed displacement of road conductors by yard conductors would involve a change in working conditions within the sweep of the Railway Labor Act, the District Court has jurisdiction and is under a duty to restrain its trustees in bankruptcy from making such change in violation of Section 2, Seventh, and Section 6 of the Railway Labor Act and subdivision (n) of Section 77 of the Bankruptcy Act. On the basis of this alone the judgment of the Circuit Court should be reversed. If, however, the court regards the Circuit Court's conclusions with reference to what it called "the merits" as more than mere dictum and as having any bearing on the jurisdictional question, the Circuit Court's conclusions are erroneous and should be set aside.

Respectfully submitted,

V. C. SHUTTLEWORTH,
CARL S. KUEBLER,
RUFUS G. POOLE,
MILTON C. DENBO,
Attorneys for the Petitioners.

September, 1945.

APPENDIX.

The pertinent provisions of the Railway Labor Act of 1926, 45 Stat. 577, as amended in 1934, 48 Stat. 1185, 45 U. S. C., Sec. 151, *et seq.*, read as follows:

"DEFINITIONS.

SECTION 1. When used in this Act and for the purposes of this Act—

"First. The term 'carrier' includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such 'carrier': *Provided, however,* That the term 'carrier' shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

* * * * * * *

"Sec. 2. . . .

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

* * * * * * *

"Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

* * * * * * *

"Tenth. The willful failure or refusal of any carrier, its officers, or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

* * * * * * * *

"NATIONAL BOARD OF ADJUSTMENT—GRIEVANCES—INTERPRETATION OF AGREEMENTS.

"SEC. 3. First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

"(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act.

"(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

"(c) The national labor organizations as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

"(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

"(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of a vacancy

in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

"(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

"(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

"(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

"First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

"Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

"Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

"Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in

this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

* * * * * * *

"Sec. 5. First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

"(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

"(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

"The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

"In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

"If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

"Second. In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both,

may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

* * * * * *

"Sec. 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board."

Excerpts from Section 77 of the Bankruptcy Act. (Tit. 11 U. S. C. Sec. 205.)

"(a) Any railroad corporation may file a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. The petition shall be filed with the court in whose territorial jurisdiction such corporation, during the preceding six months or the greater portion thereof, has had its principal executive or operating office, and a copy of the petition shall at the same time be filed with the Interstate Commerce Commission (hereinafter called the 'Commission'): *Provided*, That when any railroad, although engaged in interstate commerce, lies wholly within one State, such proceedings shall be brought in the Federal district court of the district in which its principal operating office in such State during the preceding six months or

the greater portion thereof has been located. The petition shall be accompanied by payment to the clerk of a filing fee of $100, which shall be in addition to the fees required to be collected by the clerk under other sections of this title. Upon the filing of such a petition, the judge shall enter an order either approving it as properly filed under this section, if satisfied that such petition complies with this section and has been filed in good faith, or dismissing it, if he is not so satisfied. If the petition is so approved, the court in which such order is entered shall, during the pendency of the proceedings under this section and for the purposes thereof, have exclusive jurisdiction of the debtor and its property wherever located, and shall have and may exercise in addition to the powers conferred by this section all the powers, not inconsistent with this section, which a Federal court would have had if it had appointed a receiver in equity of the property of the debtor for any purpose. Process of the court shall extend to and be valid when served in any judicial district. . . .

* * * * * * *

"(c) After approving the petition:

"(1) The judge shall forthwith (and in pending proceedings immediately upon August 27, 1935) require the debtor to give such notice as the order may direct to the mortgage trustees, creditors and stockholders, and to cause publication thereof for such period and in such newspapers as the judge may direct, of a hearing to be held not later than thirty days after the date of such order, at which hearing or any adjournment thereof the judge shall appoint one or more trustees of the debtor's property. Such appointments shall become effective upon ratification thereof by the Commission without a hearing, unless the Commission shall deem a hearing necessary. Where a trustee is appointed who within one year prior thereto has been an officer, director, or employee of the debtor corporation, any subsidiary corporation, or any holding company connected therewith, the judge, subject to ratification by the Commission as herein provided, shall appoint another trustee or trustees who shall not have had any such affiliations: *Provided*, That the appointment of such additional trustee or trustees shall not be

required for a debtor the annual operating revenues of which were less than $1,000,000 for the previous calendar year.

"(2) . . . The trustee or trustees so appointed, upon filing such bond, shall have all the title and shall exercise, subject to the control of the judge and consistently with the provisions of this section, all of the powers of a trustee appointed pursuant to section 72 or any other section of this title, and, to the extent not inconsistent with this section, if authorized by the judge, the powers of a receiver in an equity proceeding, and, subject to the control of the judge and the jurisdiction of the Commission as provided by Chapter 1 of Title 49 as on August 27, 1935, or thereafter amended, the power to operate the business of the debtor . . .

* * * * * *

"(n) . . . No judge or trustee acting under this title shall change the wages or working conditions of railroad employees except in the manner prescribed in sections 151 to 163 of Title 45, as amended June 21, 1934, or as they may be hereafter amended. . . ."

NATIONAL MEDIATION BOARD.

Washington

January 21, 1943.

Mr. H. W. Fraser, President,
Order of Railway Conductors of America,
Cedar Rapids, Iowa.

Dear Sir:

This will acknowledge your letter of January 2, 1943, relative to dispute between the Order of Railway Conductors and Central Railroad Company of New Jersey involving question described by you as follows:

> "Unable to reach agreement on proposal of management to reclassify Bayway Drill Assignments."

We are now in receipt of communication from Mr. F. M. Falck, Assistant Vice President of the above mentioned carrier, in which he questions the jurisdiction of the

National Mediation Board over the dispute submitted by you. His position is outlined in the following quotation from his letter:

> "*It is the position of the Carrier that it has filed no notice of a desire to change existing agreements nor does it propose to do so, and that this matter is a claim which under* . . . the Railway Labor Act is referable to the National Railroad Adjustment Board, if and when the Carrier proceeds with and carries out its intention of taking off road conductors on these five crews operating wholly within switching limits and substituting yard conductors as required by the Trainmen's Agreement. In other words, when that is done the Conductors, if they feel that any rule or agreement with them has been violated, can proceed exactly as the General Chairman stated in the next to the last paragraph of his letter of November 25th to file a claim with the Adjustment Board for pay for every day the road conductors are denied the right to work on these five crews and yardmen are permitted to man them. It becomes then, a question for the Adjustment Board to interpret and apply whatever agreements can be produced to determine whether the Carrier has violated the agreements or not and make the proper award."

From the above it does not appear that the carrier has yet proceeded to carry out its intention and that when it does, your remedy is to make claim under your existing agreement.

Yours very truly,

ROBERT F. COLE,
Secretary.

Please make submission and replies to correspondence in duplicate.

UNITED STATES RAILROAD ADMINISTRATION.

Washington, May 13, 1920.

Interpretation No. 2 to Supplement No. 24 to General Order No. 27.

PASSENGER SERVICE

* * *

FREIGHT SERVICE

* * *

YARD SERVICE

Article XII.—Rates of Pay.

* * *

Article XIV.—Overtime.

* * *

Article XVIII.—Point for Beginning and Ending Day.

* * *

Article XX.—Arbitraries and Special Allowances.

Section (b).

"Where regularly assigned to perform service within switching limits yardmen shall not be used in road service when road crews are available, except in case of emergency. When yard crews are used in road service under conditions just referred to, they shall be paid miles or hours, whichever is the greater, with a minimum of one hour, for the class of service performed, in addition to the regular yard pay and without any deduction therefrom for the time consumed in said service."

Question 18.—Prior to the supplement, rules or practices were in effect which provided that when yard crews regularly assigned within yard or switching limits were used outside of such limits they would be paid the highest rate for the entire day. How is such rule or practice affected by Article XX (b)?

Decision.—Superseded by Article XX (b).

Question 19.—Where certain crews are regularly assigned to perform work both inside and outside of yard or switching limits and on these runs the conductor, engineer, and fireman are paid road rates and the brakemen yard rates, is such arrangement affected by Article XX (b)?

Decision.—Not affected.

Question 20.—Does the term "minimum of 1 hour" mean that time of two short trips in road service is cumulative, or does it mean that minimum payment for each time used in road service is 1 hour?

Decision.—Minimum of 1 hour for each time used in road service.

Question 21.—How does Article XX (b) apply in following examples:

(a) Work 5 hours in yard, then used in road service 4 hours, making 20 miles; total spread, 9 hours?

(b) Work 3 hours in yard, then used in road service 2 hours, making 10 miles, returning to yard for 4 hours; total spread, 9 hours?

(c) Work 7 hours in yard, then used in road service 3 hours, making 18 miles; total spread, 10 hours?

(d) Work 2 hours in yard, used in road service 30 minutes, making 5 miles; returns to yard and works 2 hours; again used in road service for 1 hour, making 10 miles; then returns to yard and works 2 hours and 30 minutes; total spread, 8 hours?

(e) Work 1 hour in yard, used in road service for 1 hour, making 20 miles; returns to yard and works 5 hours; again used in road service for 2 hours, making 15 miles; total spread, 9 hours?

(f) Assigned from 7 a. m. to 3 p. m.; works 2 hours in yard; used in road service for 1 hour, making 10 miles; returns to yard and works 4 hours; again used in road service for 5 hours, making 25 miles; relieved at 7 p. m.; total spread, 12 hours?

(g) Assigned from 7 a. m. to 3 p. m.; work 1 hour i yard; used in road service 9 hours, making 30 miles; relieve at 5 p. m.; total spread, 10 hours?

Decision.—Under Article XX (b) yard engine crews reg ularly assigned to perform service within switching limit would be paid:

(a) Eight hours at straight yard rates, 1 hour at yard overtime rates (time and one-half), and 4 hours at pro rata road rates.

(b) Eight hours at straight yard rates, 1 hour at yard overtime rates (time and one-half), and 2 hours at pro rata road rates.

(c) Eight hours at straight yard rates, 2 hours at yard overtime rates (time and one-half), and 3 hours at pro rata road rates.

(d) Eight hours at straight yard rates, 1 hour at pro rata road rates for first road service, and 1 hour at pro rata road rates for second road service.

(e) Eight hours at straight yard rates, 1 hour at yard overtime rates (time and one-half), 20 miles at pro rata road rates for first road service, and 2 hours at pro rata road rates for second road service.

(f) Eight hours at straight yard rates, 4 hours at yard overtime rates (time and one-half), and 6 hours at pro rata road rates.

(g) Eight hours at straight yard rates, 2 hours at yard overtime rates (time and one-half), and 9 hours at pro rata road rates.

Question 22.—If yard crews who are regularly assigned to perform service within switching limits are used in road service when road crews are available, how shall they be paid?

Decision.—Except in cases of emergency, yard crews should not be used in road service when road crews are available, but whenever used in road service, yard crews should be paid for the service under provisions of Article XX (b).

Question 23.—Article XX (b) reads in part: "Where regularly assigned to perform service within switching limits," etc. What is meaning of "regularly assigned"?

Decision.—Engine crews who may properly be called and used in service within switching limits for which yard rates are paid shall be considered as "regularly assigned" under application of this rule.

Question 24.—What is the intent of the words "road service" as used in this section?

Decision.—Any service for which road rates are paid.

WALKER D. HINES,
Director General of Railroads.